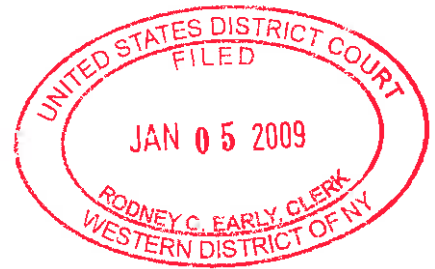


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



MICHAEL HILL,

Plaintiff,

-vs-

RICHARD BEALL, Sergeant, et al,

Defendants.

ORDER

06-CV-6568 CJS

On October 19, 2007, Plaintiff filed a motion [#19] to compel production of documents. In relevant part, Plaintiff sought to compel the production of "misbehavior report, use of force, and photographs of injuries from assault by C.O. Eastern on 6/6/97." Plaintiff stated that if Defendants could not produce such documents, that the documents could nonetheless be obtained from the file in another lawsuit filed by Plaintiff in this Court, 04-CV-6601, *Hill v. West*. On July 18, 2008, the Honorable Jonathan W. Feldman, United States Magistrate Judge, granted the motion to compel, and specifically directed Defendants to produce the aforementioned documents. (Order [#44]). On August 14, 2008, Defendants' counsel filed an affirmation [#45] stating that no such documents exist.

On December 15, 2008, Plaintiff filed a motion [#46], asking that the Court have the Easton documents, which were purportedly filed in case number 04-CV-6601, docketed in this action. The Court has reviewed the electronic and manual filings in case number 04-CV-6601, and while the file contains a number of prison disciplinary documents, none of them pertain to Easton. Those documents, which are attached to this Order, are: 1) an inmate misbehavior report from Clinton Correctional Facility dated August 26, 1992, charging Plaintiff with unauthorized sparring, written by Corrections Officer T. Kent; 2) a photograph¹ apparently taken

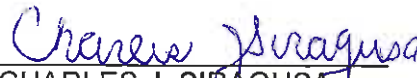
¹There were multiple photographs of the same injury.

on April 22, 2003, which shows Plaintiff with a scalp laceration; 3) an inmate misbehavior report from Elmira Correctional Facility dated October 26, 2004, charging Plaintiff with fighting, disorderly conduct, attempting to commit bodily harm and disobeying a direct order, written by Corrections Officer Coolbaugh; 4) an inmate misbehavior report from Elmira Correctional Facility dated October 26, 2004, charging Plaintiff with possessing a sharpened plexiglass shank, written by Corrections Officer R. Truax; 5) an inmate misbehavior report from Attica Correctional Facility dated April 18, 2005, charging Plaintiff with assault on an inmate, weapon possession, violent conduct and possession of an altered item, written by Corrections Sergeant Skomski; and 6) an inmate misbehavior report from Attica Correctional Facility dated June 18, 2005, charging Plaintiff with violent conduct, weapon possession, fighting and infliction of bodily harm, written by Corrections Officer Hupkowicz.

Plaintiff wants the Court to consider the alleged Easton documents in connection with the parties' pending summary judgment motions [#20][#26], in order to establish a retaliatory motive by Easton and the other Defendants. To establish such motive, it is not necessary for Plaintiff to produce the documents. Instead, in considering Defendants' summary judgment motion, the Court will view the evidence in the light most-favorable to Plaintiff, and will, based on Plaintiff's statements, assume that on June 6, 1997, Easton issued Plaintiff a misbehavior report, and used force against Plaintiff that resulted in injuries. However, since the Easton documents are not contained in the Court's file in case number 04-CV-6601, Plaintiff's motion [#46] to have such documents made a part of the record is denied.

Dated: Rochester, New York
December 22, 2008

ENTER:


CHARLES J. SIRAGUSA
United States District Judge